

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

ELIZABETH SINES, et al.,)	
)	
Plaintiffs,)	Civil Case No. 3:17-CV-00072
)	
vs.)	
)	
JASON KESSLER, et al.,)	
)	
Defendants.)	

STATUS HEARING
HONORABLE NORMAN K. MOON PRESIDING
MONDAY, DECEMBER 16, 2019, 11:57 A.M.

Court Reporter: Judy K. Webb, RPR
210 Franklin Road, S.W., Room 540
Roanoke, Virginia 24011
(540) 857-5100 Ext. 5333

Proceedings recorded by mechanical stenography.
Transcript produced by computer.

Sines, et al. v. Kessler, et al. - 12/16/19

A P P E A R A N C E S

On behalf of Plaintiffs Elizabeth Sines, Seth Wispelwey, Marissa Blair, Tyler Magill, April Muniz, Hannah Pearce, Marcus Martin, John Doe, Natalie Romero, and Chelsea Alvarado:

Jessica E. Phillips, Esquire

Boies Schiller Flexner, LLP

1401 New York Avenue, NW

Washington, DC 20005

Michael Low Bloch, Esquire

Kaplan Hecker & Fink LLP

350 Fifth Avenue, Suite 7110

New York, NY 10118

ERIN BOYD ASHWELL, ESQUIRE

Woods Rogers PLC

10 S. Jefferson Street, Suite 1400

Roanoke, VA 24011

For Defendant Elliott Kline:

ELLIOTT KLINE, PRO SE

117 Mesa Drive

Reading, PA 19608

Sines, et al. v. Kessler, et al. - 12/16/19

1 (Court convened at 2:04 p.m.)

2 THE COURT: Call the case, please.

3 THE CLERK: Yes, Your Honor. This is Civil Action
4 3:18-CV-27, *Elizabeth Sines and others versus Jason Kessler*
5 *and others*.

6 THE COURT: The plaintiffs ready?

7 MS. PHILLIPS: Yes, Your Honor.

8 THE COURT: The defendants ready?

9 DEFENDANT KLINE: Yes, Your Honor.

10 THE COURT: All right. We are here on a second
11 hearing relating to Elliott Kline's civil contempt. At the
12 last hearing on this issue on November 25, this Court found by
13 clear and convincing evidence that Mr. Kline was in contempt
14 of court for his serious and repeated violations of numerous
15 discovery orders from Judge Hoppe and this Court.

16 Two days later, on November 27, I issued a written
17 order memorializing my findings that Mr. Kline was in civil
18 contempt. At the hearing and in the written order, I was
19 clear about several things: One, Mr. Kline's conduct was
20 contemptuous of numerous valid court orders; two, Mr. Kline
21 needed to take certain specific steps to purge himself of that
22 contempt; and, three, for as long as he did not comply, he
23 would be subject to a daily fine of \$200. And if that didn't
24 work, potentially incarceration until he did purge himself of
25 contempt.

Sines, et al. v. Kessler, et al. - 12/16/19

1 The follow-up hearing has been scheduled since
2 November 25th to assess the status of Mr. Kline's steps to
3 purge himself of contempt. I have reviewed numerous filings
4 before today's hearing about this issue. I received
5 plaintiff's motion for evidentiary sanctions filed against
6 Mr. Kline, and I considered, in particular, those pages
7 relating to Kline's conduct since the last contempt hearing
8 and that he had failed to purge himself of his civil contempt.

9 I directed Mr. Kline to submit by Friday,
10 December 13, a brief or response addressing any and all steps
11 he had taken to purge himself of contempt, and I further
12 directed Mr. Kline to address how and when he had satisfied
13 each of the discovery obligations set forth in paragraph 41 of
14 this Court's order finding Elliott Kline in civil contempt.
15 That part of the order clearly laid out the steps Mr. Kline
16 needed to fulfill to purge himself of contempt.

17 I received and considered Mr. Kline's response on
18 Friday, December 13, in which he contended, among other
19 things, that he has been entirely in compliance with his
20 discovery obligations to the best of his ability, and that he
21 has tried working with plaintiffs to resolve any remaining
22 issues.

23 I directed plaintiffs also to file a supplemental
24 brief on Friday addressing any further steps Mr. Kline had
25 taken to purge himself of civil contempt, and I also directed

Sines, et al. v. Kessler, et al. - 12/16/19

1 plaintiffs to file an update about the status of discovery
2 collection efforts and what evidence plaintiffs intended to
3 introduce today. I have received and considered their
4 response as well.

5 Their position remains that Mr. Kline has failed to
6 purge himself of contempt, and, further, that it appears from
7 his other conduct, like responding to plaintiffs' second set
8 of discovery requests, that he is not demonstrating any change
9 in future behavior to comply with his obligations to
10 plaintiffs and this Court. That brings us to today.

11 The Court has already found by clear and convincing
12 evidence that Mr. Kline is in contempt of court, and I
13 provided clear steps Mr. Kline can take to purge himself of
14 contempt. The burden shifts to Mr. Kline at this point to
15 show that he has substantially complied with the Court's
16 orders or that he is unable to do so.

17 I want to hear from both parties today, but we'll
18 start with the plaintiff, plaintiffs' counsel. Let's work
19 from paragraph 41 of the Court's civil contempt order to
20 Mr. Kline.

21 With regard to each of the obligations this Court
22 stated Mr. Kline needed to undertake to purge himself of
23 contempt, has he satisfied any of those in your view?

24 MS. PHILLIPS: Thank you, Your Honor. If I may, it's
25 probably easiest if I go paragraph by paragraph through the

Sines, et al. v. Kessler, et al. - 12/16/19

1 subparagraphs --

2 THE COURT: Yeah.

3 MS. PHILLIPS: -- of paragraph 41 from your
4 November 27th order.

5 Paragraph 41A requires that Mr. Kline respond in
6 writing fully and completely to plaintiffs' first set of
7 interrogatories and plaintiffs' request for production of
8 documents. When those are complete, Kline must send those to
9 plaintiffs and e-mail them to the Court's chamber's account,
10 as well as that to Judge Hoppe.

11 Mr. Kline submitted on December 5th, 2019, his
12 responses and answers to plaintiffs' first set of
13 interrogatories. They were unsigned, they were not under
14 oath, and in plaintiffs' view, all four interrogatory
15 responses were entirely deficient and incomplete, particularly
16 with regard to previous testimony that Mr. Kline gave both
17 here during the November 25th hearing, but also during his
18 August 2019 deposition.

19 And as a minor point, I don't believe that he
20 e-mailed his interrogatory responses to either Your Honor or
21 to Judge Hoppe.

22 Subparagraph B of paragraph 41 requires Kline to
23 provide the third-party discovery vendor his e-mail and social
24 media credentials, including his passwords for every account
25 he identified on his certification form, or that should have

Sines, et al. v. Kessler, et al. - 12/16/19

1 been included on such form originally.

2 Romanette I requires him to conduct a diligent search
3 of his electronic and other records to confirm that the list
4 of credentials he included on his certification form is
5 complete, and to uncover his credentials, including passwords
6 to any of these accounts.

7 I don't have any information on whether Mr. Kline has
8 indeed conducted the search required by Romanette I. I will
9 note that his submission from December 13th says nothing about
10 having conducted such a search.

11 I will note that he did provide on December 4th,
12 2019, to the vendor further confirmation that he does not, in
13 fact, have any account credentials for his eight different
14 Twitter accounts and some other social media accounts. He did
15 provide on December 13th, in the submission, that he made his
16 e-mail password for the elierkline@gmail.com address, and we
17 confirmed this morning with the vendor that that address does
18 in fact -- or, excuse me, that that password does in fact
19 work.

20 Romanette II of 41b requires Mr. Kline to confirm --
21 for any and all accounts to which he confirms he does not have
22 credentials, he will submit a declaration under oath and under
23 penalty of perjury to that effect, and which states with
24 specificity the reasons why such credentials are unavailable
25 to Mr. Kline. Mr. Kline has not submitted such a declaration

Sines, et al. v. Kessler, et al. - 12/16/19

1 as far as plaintiffs are aware.

2 Romanette C requires Kline to provide his Walmart
3 phone, which he did do on November 25th. It also requires him
4 to provide his home computer that he identified to the
5 third-party discovery vendor for imaging. And then Your
6 Honor's order from December 10th, the fourth item in that
7 order also required him to bring that PC here today.

8 I have confirmed with the vendor this morning that
9 they have not received the computer. Again, I don't know if
10 he showed up with a computer. I know his assertion to the
11 third-party vendor was that it was, quote/unquote,
12 nonrecoverable.

13 And finally, paragraph D requires Mr. Kline to sign
14 and provide the third-party discovery vendor the privacy and
15 consent forms required by Twitter. My understanding is that,
16 again, he has represented that he cannot do so because the
17 privacy form required by Twitter asks for the e-mail address
18 that he used to create his Twitter accounts. Again, there are
19 eight different Twitter accounts, and he represents that he
20 does not have the e-mail address that he used to create any
21 one of those eight. So in short, I think his allegation is
22 that he is unable to comply with paragraph D. But, again, we
23 don't have a declaration from him so stating.

24 So in short, plaintiffs' view is that Mr. Kline is
25 most certainly still out of compliance with the November 27th

Sines, et al. v. Kessler, et al. - 12/16/19

1 order, but also, in fact, your December 10th order in that his
2 response submitted on December 13th was deficient in that it
3 didn't do, really, any of the four things that you had
4 required him to do.

5 THE COURT: Okay. Well, with regard to the social
6 media accounts for which he says he cannot complete his
7 consent forms or that he cannot provide credentials because he
8 used burner e-mail addresses to set them up, if you could
9 identify any other -- if any others fall into that category
10 besides Twitter -- my question is here: Is there anything
11 Kline can possibly further do with respect to those at this
12 stage with --

13 MS. PHILLIPS: I -- I'm sorry to interrupt you.

14 THE COURT: No. No.

15 MS. PHILLIPS: My understanding is the only thing
16 left for him to do with regard to that is, in fact, fill out
17 the declaration under oath. I want to make sure I get the
18 language correct from your November 27th. "For any and all
19 accounts to which Kline confirms he does not have the
20 credentials, he will submit a declaration under oath and under
21 penalty of perjury to that effect, and state with specificity
22 the reasons why such credentials are unavailable to Kline."
23 That is still outstanding. But I think with regard to the
24 social media credentials that's the final step he can do since
25 he alleges he has no access to any of them and doesn't recall

Kline - Examination by the Court

1 the e-mail accounts that were used because they were burner
2 e-mails.

3 THE COURT: Okay.

4 All right. Mr. Kline, you've heard the plaintiffs'
5 position. I'll hear any argument or evidence you have to
6 present as to whether you have purged yourself of contempt.

7 DEFENDANT KLINE: Your Honor, so I believe that I
8 have done to the best of my ability what they've asked me to
9 do after --

10 THE COURT: Okay. I think that has to be evidence,
11 so you'll have to be sworn and testify.

12 DEFENDANT KLINE: That's okay, Your Honor.

13 THE COURT: All right.

14 DEFENDANT KLINE: Can I bring my stuff with me?

15 THE COURT: Be sworn.

16 THE CLERK: Please raise your right hand.

17 ELLIOTT KLINE, COURT WITNESS, SWORN

18 EXAMINATION

19 BY THE COURT:

20 Q If you would come over and take a seat in the witness
21 box.

22 A Can you hear me?

23 Q Yes.

24 A So, Your Honor, like I said, I believe that I have done
25 as much as I can to get the discovery part -- portions done.

Kline - Examination by the Court

1 The plaintiffs mentioned a couple of things that I just
2 wanted to go over. The first thing was the not having a sworn
3 statement to the Court. I thought that the e-mail that I had
4 sent with the document was the sworn statement. I wasn't
5 aware that I had to say anything under oath or anything like
6 that. But I am prepared to do that here, now, if I need to,
7 or however that works. I thought that the e-mail that I had
8 sent with the interrogatories answering that was an
9 under-oath --

10 Q You thought that an e-mail was under oath?

11 A I thought that that was, like, an official -- an official
12 document by answering those interrogatories, Your Honor.

13 As far as the social media accounts are concerned,
14 they're correct. I tried to actually go on Twitter's website,
15 like the discovery vendor had asked me to, and complete the
16 privacy information form to release the data to them, but it
17 does ask for the original e-mails. And as I've said numerous
18 times, I don't have access to of any those e-mails. And I
19 would be willing to confirm that with the sworn statement
20 under oath as well.

21 As far as the computer goes that was mentioned, that
22 computer, as I had said at the deposition in August, is a
23 computer that I used before I was a member of the Alt-right.
24 The last time I had used it was in 2016, and it wasn't used
25 for any purposes related to Unite the Right or any

Kline - Examination by the Court

1 communication.

2 Q Well, you were ordered to turn that computer over,
3 correct?

4 A Correct, Your Honor.

5 Q Well, you understand the idea was for someone else to
6 check the computer to see? It was not -- we don't take your
7 word for it, nor anyone else's word in any other case.

8 A I understand.

9 Q When you're ordered to turn over something, it is for the
10 purpose of someone else verifying what you might say. You're
11 not the last word on that.

12 A I understand, Your Honor. At the deposition, I described
13 it -- I didn't know if the computer was still even -- if I
14 still had it. And I thought it was in one of two storage
15 sheds, so I went and checked both those storage sheds and it
16 was no longer there. So when I moved back in 2016, that
17 computer had been dropped, and it must have been thrown out
18 when we were moving. So I don't have that computer at all is
19 the reason that I'm not able to provide that computer either.

20 Q Okay. Go ahead.

21 A And then the -- I think the last portion was the sworn
22 statement with all the social media accounts, confirming that
23 I have not -- I don't have access to the credentials for them.
24 I'm ready to do that whenever. I'm unsure how exactly I would
25 go about doing that, other than doing that here today in

Kline - Examination by Ms. Phillips

1 court.

2 But the information that I have sent the discovery team
3 with my cell phones, everything like that, I've provided
4 everything that they've asked me to provide to the best of my
5 ability. The only -- the big issue is the release forms,
6 which all ask for the e-mail address for the account that was
7 originally used, which I don't have, and I had said at the
8 deposition in August, as well as at the court -- to the Court
9 last time I was here.

10 THE COURT: Any questions plaintiff would like to ask
11 him?

12 MS. PHILLIPS: May I?

13 THE COURT: Yes.

14 MS. PHILLIPS: Just a couple.

15 May I give Your Honor and Mr. Kline a binder of
16 documents just to refer to.

17 EXAMINATION

18 BY MS. PHILLIPS:

19 Q Okay. Mr. Kline, the first thing, I'd just like to
20 direct your attention to tab 2, and tab 2 is Judge Moon's
21 November 27th order. And I'll direct your attention to page
22 14, which includes paragraph 41 that we've been talking about.

23 Actually, you know what, first I'll have to turn to page
24 2 of that order. Are you at page 2?

25 A One moment. Yes.

Kline - Examination by Ms. Phillips

1 Q Okay. Look at the third full paragraph down. And that
2 third full paragraph says: "To coerce Kline into compliance
3 with court orders, this Court will impose upon Kline (and in
4 favor of plaintiffs) a remedial fine of \$200 per day of his
5 noncompliance, which fine will be suspended until
6 December 2nd, 2019, to be incurred at 5:00 p.m. Eastern on
7 that date and on each follow day of noncompliance, until Kline
8 purges himself of contempt."

9 Do you see that?

10 A Yes.

11 Q Okay. And we had a hearing three weeks ago today in this
12 courtroom, correct? Do you recall that?

13 A Yes.

14 Q Between November 25th, that hearing date, and
15 December 2nd, the date on which you would begin to be fined,
16 you didn't take a single one of the steps laid out in
17 paragraph 41 of tab 2 in order to come into compliance with
18 Judge Moon's orders, did you?

19 A That's when I was doing the -- my diligence search to
20 look for the credentials and things like that. So I had gone
21 back through thinking maybe the e-mails I do have access to,
22 maybe some of them were used for some of the Twitter accounts
23 and things like that. So I went through and checked those and
24 a couple of other places; I did not find those at all.

25 Q But between November 25th and December 2nd, you did not

Kline - Examination by Ms. Phillips

1 submit to plaintiffs or the Court your interrogatory answers,
2 correct?

3 A Correct.

4 Q Okay. And you did not produce any documents to
5 plaintiffs between November 25th and December 2nd, correct?

6 A Correct.

7 Q And you did not submit to the Court your declaration
8 under oath with regard to your social media credentials during
9 that time period, correct?

10 A Correct.

11 Q Okay. I will direct your attention to -- go to tab 5,
12 please. This document is plaintiffs' supplemental brief filed
13 in support of our motion for evidentiary sanctions that the
14 Court asked us to file. And I'm specifically going to ask you
15 to take a look at Exhibit B to this document. And I apologize
16 in advance; the writing is very small on the e-mail.

17 But if you take a look at Exhibit B, and go to the second
18 page of Exhibit B to the very first e-mail in a chain of
19 e-mails. Do you see that?

20 A You're on tab 5, you said?

21 Q Correct, tab 5.

22 A You mean the first e-mail address?

23 Q Again, are you at tab 5?

24 A I'm at tab 5. I'm on page 4, at the very top.

25 Q Yeah. Go to Exhibit B.

Kline - Examination by Ms. Phillips

1 A Oh, I see where you mean. There was a B up here.

2 Q Got it. I apologize.

3 If you could find that second page which begins this
4 e-mail chain. Are you with me?

5 A I see it, yes.

6 Q Okay. So the first e-mail there is Monday, December 2nd,
7 2019. Do you see that?

8 A Yes.

9 Q And it's from Ken Kim? Do you see that?

10 A Yes.

11 Q And do you understand that Mr. Kim is from the
12 third-party vendor in this case?

13 A Yes.

14 Q Okay. And he says, "Mr. Kline, we are reaching out to
15 you again separately with requests for credentials, additional
16 information to be able to proceed with all pending
17 collections. Please see below excerpt from the status report
18 e-mailed to you on November 8th."

19 And then at the bottom he says, "Please confirm all the
20 above accounts, user names, and provide credentials to access
21 all the accounts. Also, please provide us with access to your
22 PC for us to image and complete collection."

23 Do you see that?

24 A Yes.

25 Q And you did not respond to this e-mail until after

Kline - Examination by Ms. Phillips

1 December 2nd, correct?

2 A Yes.

3 Q Okay. And then if you look at the next e-mail up, which
4 is a December 3rd e-mail to you, also from Ken Kim. Do you
5 see that?

6 A December 3rd?

7 Q Yeah. It's on the same page, just immediately above it.

8 A Okay. Yes, I see that.

9 Q So he says, "In addition to the below requests, can you
10 also provide passwords for the following e-mail accounts so
11 our forensic consultants can assess for collection purposes."
12 And then he lays out a couple of e-mail addresses.

13 Now, you didn't respond to Mr. Kim's e-mail here until
14 after December 2nd, correct?

15 A Correct. I believe it was December 6th that I responded.

16 Q Well, if you turn to the first page -- again, we're
17 following this e-mail chain -- you responded on December 4th.
18 Do you see that?

19 A Yes.

20 Q And you say at the very bottom of that page, the second
21 sentence, "I will be sending the rest of my discovery
22 documents today as well." Do you see that?

23 A Yes.

24 Q But you didn't send those discovery documents on
25 December 4th, did you?

Kline - Examination by Ms. Phillips

1 A No. That was while I was trying to figure out the issue
2 with the password. The thing I had sent you guys -- the
3 screenshot I sent you guys was when I was trying to get the
4 work -- try to get the Twitter and Facebook -- or the Twitter
5 and Discord release forms done without an e-mail.

6 Q Okay.

7 A I wasn't expecting to not be able to do it without the
8 e-mail.

9 Q But you didn't send in, for example, the answers to your
10 interrogatories on that date, did you?

11 A No. I did on the 6th, while I was trying to figure out
12 how to -- how to complete them.

13 Q Okay. Let's go ahead and take a look at your
14 interrogatories that you responded.

15 Please turn to tab 3 in the binder and go to the very
16 last page, please.

17 Do you recognize these as the interrogatory answers that
18 you sent to plaintiffs via a Google document link?

19 A Yes.

20 Q And we've covered this, but these are not signed,
21 correct?

22 A Correct. Like I said, I was under the impression that by
23 me sending it from the e-mail address that I had been using,
24 that that was a signature. I didn't realize that I would need
25 to, like, print it out and sign it or anything like that. I

Kline - Examination by Ms. Phillips

1 don't have access to a printer, so the only way I would be
2 able to do this was through a Google sheet or something like
3 that.

4 Q Okay. And they're not certified by you either, correct?

5 A I'm not sure what that means.

6 Q Okay. You didn't swear to the truth of these answers
7 under oath, correct?

8 A Correct. But I'm prepared to do that whenever.

9 Q Okay. And did you serve these interrogatory answers on
10 either Judge Moon or Judge Hoppe?

11 A I thought I had -- I thought I had done that, and when
12 the next e-mail from you guys came saying that I hadn't done
13 that, I then -- I had then saw you guys had forwarded it to
14 them for me.

15 Q Okay. The first interrogatory answer here mentions as
16 methods by which -- that you used to communicate for Unite the
17 Right, Discord, and Twitter. Do you see that?

18 A Yes.

19 Q Okay. But you didn't include in this particular answer,
20 for example, any of the four e-mail addresses that you've
21 identified, correct?

22 A Correct.

23 Q Okay. And you didn't include a Facebook account in this
24 answer, did you?

25 A Well, part of the issue with Facebook is, to list the

Kline - Examination by Ms. Phillips

1 Facebook account, I need to know the name of it. So I should
2 have put in here, "A Facebook account that I don't know the
3 name of," essentially, but I don't have the credentials for
4 the Facebook account as well.

5 Q Okay. And you didn't list a Gab account in this answer
6 to this Interrogatory Number 1 either, did you?

7 A Correct.

8 Q Okay. And you did list both the Facebook account and the
9 Gab account in the certification that you filled out on the
10 day of your deposition?

11 A Correct.

12 Q So you would agree with me, then, that your answer to
13 Interrogatory Number 1 is not a fulsome answer?

14 A Like I said, I didn't realize that that wasn't -- that
15 those two things were separate. So I thought this was
16 something that went with the certification form. I didn't
17 realize that everything that was on the certification form
18 also had to be on the interrogatories, if that makes sense.

19 I was just trying to list out all the accounts here that
20 I had used, and that wasn't necessarily the account names
21 listed on the certification form. So the Discord, for
22 example, the Discord name isn't -- it's listed -- it wasn't
23 listed on the certification form either -- or wasn't listed on
24 the certification form with the name of the account with the
25 number.

Kline - Examination by Ms. Phillips

1 Q So your certification form is also not accurate, or at
2 least not fulsome?

3 A No -- it was -- that was -- that was on the form that you
4 guys had given me, that I had signed previously saying that I
5 have. But what I mean is the Excel spreadsheet list of
6 accounts, I was just trying to fill in what was missing from
7 there.

8 Q Okay. Understood. But we can agree that you have other
9 accounts that you used to communicate for Unite the Right that
10 are not listed in your interrogatory answer Number 1, correct?

11 A Yes. But I can easily amend the -- all it is, is the Gab
12 account that I had previously given you guys access to, that
13 you guys have access to, and the Facebook account that I don't
14 have access to, that I've already sent that to you guys.

15 Q If you take a look at Interrogatory Number 3, you were
16 asked to identify all persons, natural and nonnatural, with
17 whom you communicated concerning the events, meaning Unite the
18 Right, whether before, during, or after the events. And
19 you've listed here, I believe, 12 individuals, correct?

20 A Correct.

21 Q Okay. But, for example, you did not list police
22 officers, Charlottesville police officers with whom you
23 corresponded about Unite the Right, correct?

24 A Correct. I don't recall any of their names.

25 Q But you didn't say "Charlottesville police officers" in

Kline - Examination by Ms. Phillips

1 this answer, did you?

2 A No.

3 Q Okay. And you didn't list, for example, Thomas Ryan
4 Rousseau here, did you?

5 A No. I didn't remember that he was someone that I had
6 contacted. Later I said, he is someone that I had -- during
7 my deposition I described -- I think it was during my
8 deposition -- that he had contacted me. He's someone I never
9 really had spoken to before that. And it was him messaging me
10 and me just saying "Okay," and that was it. So I could amend
11 this to just include him as well. I just had forgot about him
12 because it was such a brief and -- it was a while back
13 conversation that we had.

14 Q Okay. Well, you testified in your deposition, as you
15 just conceded, that you had had conversations with Thomas Ryan
16 Rousseau, but you didn't list him here.

17 And you communicated over Discord with many more people
18 than just the 12 that you listed here, correct?

19 A Yes. But I don't know any of their names or anything
20 like that.

21 Q Okay. But, again, you would agree with me that your
22 answer here, then, is a deficient response? This is not a
23 fulsome answer, is it?

24 A So, like I said, I didn't know that that's what this --
25 that that's what needed to be included in this, was people I

Kline - Examination by Ms. Phillips

1 wouldn't -- I didn't know, right? So I don't know the
2 officers I spoke to; I don't know, like, most of the people I
3 spoke to on Discord, because they use pseudonyms or fake names
4 and like that. So I wasn't aware that I needed to put in
5 people that don't have -- that I don't know their names.

6 Q Well, you know Thomas Ryan Rousseau's name, correct?

7 A I only knew him as Thomas. I didn't recognize his whole
8 full name before, but, yes. He's someone that I just didn't
9 remember, like I said.

10 Q Okay. If you take a look at Interrogatory 4, it asks you
11 to identify all electronic devices used by you to communicate
12 concerning the events whether before, during, or after the
13 events. And this -- your response states that you used the
14 610 iPhone that's already been sent in for discovery; the
15 Walmart phone, your current iPhone, you sent those in.

16 What about the phone that's associated with the phone
17 number (347)868-7023?

18 A I looked at that. That was part of what took me a little
19 bit, because I saw that you guys had put that as a number. I
20 looked for that number in all of my -- in everything I had,
21 and I've never seen that number. I don't know where it's
22 from. I don't know if it's somebody else's number that was
23 put next to mine for a contact. But I've never used a number
24 like that or had a phone number like that. I never had a 347
25 number linked to me or anything like that. I looked to try to

Kline - Examination by Ms. Phillips

1 find where that number came from or who it was, and I wasn't
2 able to find it.

3 Q Take a look at tab 3, please. And I'm going to direct
4 your attention to Exhibit E. It's sort of in the middle of
5 this large document. And at the bottom of the page, you'll
6 see it's page 7771, just to get you to Exhibit E.

7 A Okay, I'm there.

8 Q Okay. And so take a look at the next page. Do you
9 recognize this as the operational document that you have
10 conceded that you wrote?

11 A Yes.

12 Q Okay. And if you look at the second page of this
13 document, the bottom number is 7773, and I'm going to direct
14 your attention to contact information. Do you see that?

15 A Yes.

16 Q It says, "Leading up to the event, I am releasing my
17 direct contact information to leaders and directors. I'm in
18 the middle of a move, but feel free to message me directly for
19 anything regarding the event. Eli Mosley dash Discord, Eli
20 Mosley hash tag 5269 dash phone number (347)868-7023, e-mail
21 deplorabletruth@gmail.com. Feel free to message, call
22 whenever." Do you see that?

23 A Yes.

24 Q Do you understand that that's where we got this 347
25 number?

Kline - Examination by Ms. Phillips

1 A Yes. Like I said, when I went through the documents that
2 you guys had sent me, I found this and I tried to go back to
3 find the number. On other -- on the older version, the last
4 version, I guess, of this document, it was updated to my 610
5 number. So I can only assume -- I mean, this is two years
6 ago, so I don't really remember. I can only assume that this
7 was somebody else's number that I accidentally put here,
8 something like that, because I never used any 347 number or
9 any number during this, other than the (610)406-2229 number.

10 Q Okay. Go back to your interrogatory answers, if you
11 will. Again, that's the very last page of tab 3. And we're
12 still on your response, your answer to Interrogatory Number 4.
13 You mention there having used a laptop owned by defendant
14 Damigo. Do you see that?

15 A What's the tab again? I'm sorry.

16 Q Sure. Tab 3.

17 A Tab 3.

18 Q Very last page.

19 A But, yes, I remember putting that, yes.

20 Q Okay. But you've never informed plaintiffs before that
21 you used defendant Damigo's laptop?

22 A I didn't remember that I used his laptop. And I got an
23 e-mail -- and you guys can see this in the discovery. I got
24 an e-mail to my Deplorable Truth e-mail that was while I was
25 trying to find -- meet my discovery obligations, and it was a

Kline - Examination by Ms. Phillips

1 picture of me on Nathan Damigo's laptop, and it was from the
2 piece that's in evidence already, the New York Times' piece
3 about me, with me using Nathan Damigo's laptop. And they
4 said, "Is this your computer?" I looked at the laptop and it
5 was definitely Nathan's. It has a Marine sticker on it -- he
6 was a Marine -- with an Identity Evropa sticker on it, so that
7 reminded me of that. I did not remember ever using it. I
8 must have used it for maybe five minutes at most.

9 Q Who you sent you this e-mail?

10 A It was an anonymous e-mail, citing someone that was
11 investigating the Unite the Right events privately. That
12 email is the Deplorable Truth e-mail, so you guys can see that
13 e-mail in discovery, and when I responded.

14 Q When you say it was an anonymous e-mail, you mean it came
15 from --

16 A It came from an e-mail address I didn't recognize. I
17 don't know who it was.

18 Q Okay. Do you recall what the e-mail address was?

19 A No, but like I said, it's in my e-mail inbox.

20 Q Okay. Mr. Kline, you have not answered plaintiffs'
21 second set of interrogatories yet, have you?

22 A No. But in your motion -- or in the papers that you guys
23 filed for today, you said that it was attached to the e-mail,
24 the e-mail you guys had sent with the first interrogatories
25 after the previous court date. I went through those

Kline - Examination by Ms. Phillips

1 attachments, and I read through every single attachment,
2 searched the whole thing, and it was not in the attachments.
3 It was not there, the second set.

4 Q We also handed you a hard copy of that right here in this
5 courtroom.

6 A I brought with me -- that binder over there is all of the
7 things that you guys gave me, and I looked through that as
8 well and didn't see it. Now, I could be missing it in that
9 binder, but I know you guys didn't e-mail it to me. Like I
10 said, I went through all those attachments, and those are in
11 my e-mail as well, and it's not anywhere in there.

12 However, again, I would be more than willing to do the
13 second interrogatories. I mean, I will do it right now under
14 oath if that's what needs to be done for the interrogatories.

15 THE COURT: Well, you knew you had to do it. And
16 when it wasn't there, why didn't you call her and say it
17 wasn't there?

18 THE WITNESS: The court order said the first set of
19 interrogatories, Your Honor.

20 THE COURT: Excuse me?

21 THE WITNESS: The court order that you put forward
22 said the first set of interrogatories. So when I went through
23 and did the -- like, went through to complete my discovery
24 obligations, I went through the e-mail they sent me with the
25 attachments, and since it wasn't there, it wasn't something

Kline - Examination by Ms. Phillips

1 like, "Oh, they also didn't do the second set of
2 interrogatories." Because I went through the court order, I
3 read through the court order to make sure I was doing
4 everything that I needed to do, and it just said the first set
5 of interrogatories. And then it wasn't also attached to the
6 e-mail.

7 THE COURT: You knew you had an outstanding
8 obligation not withstanding that order --

9 THE WITNESS: I knew that there was a second set of
10 interrogatories, I didn't know if they were -- if they were
11 stipulated on the first set being completed.

12 So the first set of interrogatories that I was
13 sending forward, when I was doing that, there was no second
14 set of interrogatories in the e-mail or anything like that.

15 Like I said, Your Honor, I have no issue filling out
16 the second interrogatories, but I didn't even know that they
17 were part of what I had to complete to be in compliance with
18 discovery so far, because they weren't listed in the court
19 order, as well as they weren't in the attachments.

20 If they were in either of those two things, then,
21 yes, I would have went back and said, "Oh, I also need to do
22 the second set of interrogatories because the court order
23 says," or "Oh, there's also a second set of interrogatories in
24 the attachments." But neither of those things were there, so
25 I didn't realize it was something I needed to do that I hadn't

Kline - Examination by Ms. Phillips

1 done.

2 THE COURT: Go ahead.

3 BY MS. PHILLIPS:

4 Q Do you understand that those responses were due to
5 plaintiffs on November 29th, 2019?

6 A No, I did not.

7 Q Okay. If you go back to Judge Moon's order, if you turn
8 to tab 2, please. And now I'll address to you page 14,
9 please. And I'm looking at paragraph 41b, and the first
10 Romanette that requires you to conduct a diligent search of
11 your electronic and any other records to confirm that the list
12 of credentials that you included on your certification form is
13 complete, and to uncover your credentials, including passwords
14 to any of these accounts.

15 I would like to you describe for the Court the search
16 that you undertook to become in compliance with that
17 particular provision of the order.

18 A So the e-mail or the social media accounts that I have
19 were mostly all done through burner e-mail, to my knowledge.
20 So everything was done through me going on a website that
21 makes an e-mail for you so that you can create accounts on
22 websites. And I did this to avoid bans on Twitter.

23 So I went through my actual e-mail addresses, my real
24 e-mail addresses, the Deplorable Truth one, the Eli F. Mosley
25 one. All the e-mail addresses that I have listed for you guys

Kline - Examination by Ms. Phillips

1 that I have access to, I went through all of those to see if
2 any of those e-mails were used for any of the account
3 creations, and I didn't see any account creation verification
4 e-mails in those inboxes.

5 So I went through, basically, the e-mails I do have
6 access to, to try to see if I could match one of the user
7 names to one of the e-mail addresses, so I could at least get
8 access to one of the Twitter accounts. But I wasn't able to
9 find of any those that matched.

10 Q Okay. So you can't do the Twitter privacy form, you
11 can't give us credentials for any of your Twitter accounts or
12 your Facebook accounts. You haven't submitted complete
13 answers to the first set of interrogatories, you haven't
14 submitted any answers to the second set of interrogatories,
15 and you've produced a single document. Is that all correct?

16 A The first set of interrogatories I did complete, and I
17 did complete to the best of my ability. And as we just
18 previously discussed, there are -- there is something I should
19 add because I didn't understand that I needed to put
20 information I did not know in the interrogatories. So the
21 information that I did not know, things like the police
22 officers' names, I didn't realize I had to put in there
23 Charlottesville police officers whose name I don't know, or
24 people in Discord whose names I don't know, I didn't realize I
25 had to put those types of things in the interrogatories.

Kline - Examination by Ms. Phillips

1 As well as the e-mail addresses, since I've -- I didn't
2 put those in there because I thought that those were something
3 that we already had -- you guys already have access to, you've
4 already confirmed you have access to all of them. I just
5 didn't put those in there. I should have put those in there
6 as well. But I did complete the interrogatories to the best
7 of my ability, to try to get those done for you guys. Like I
8 said, I just wanted to comply --

9 Q The first set.

10 A The first set, right, with the first set of
11 interrogatories.

12 Just to be clear, I still haven't seen the second set of
13 interrogatories. I went through my e-mail after I saw the
14 form you guys sent out Friday afternoon, so -- that said, you
15 know, I haven't completed the second set of interrogatories.
16 I went through my e-mails and I couldn't find that one either.
17 So I searched for "second set of interrogatories," things like
18 that, and I couldn't find it. So if I could just get resent
19 those, I would be more than happy to do that.

20 But like I said, that was not attached to -- that was not
21 attached to the e-mail that you guys had sent me after our
22 last court date, the second set of interrogatories, which is
23 where I was going through and making sure I completed all of
24 what I needed to complete; I was going through that e-mail to
25 comply with the Court.

Kline - Examination by Ms. Phillips

1 Q But you did receive an e-mail on October 30th, receiving
2 service of those second set of interrogatories, correct?

3 A When I did my search, I did not see that in there. So I
4 don't have access to e-mail right now, but I can --

5 Q I just confirmed that you did receive it, so --

6 A Okay.

7 Q Do you recall receiving -- well, we can go through your
8 documentation. But court officials handed you hard copies of
9 both sets of interrogatories when you were here on the 25th.
10 You don't remember that?

11 A No. I only -- like I said, everything I was given, I
12 walked out with in that binder; I brought it with me. And it
13 has two papers. It has the interrogatories as well as the --
14 I believe it's the request for documents.

15 Q Okay. Turn to tab 4, will you, please, in your binder.
16 And this is Judge Moon's December 10th order. And I'll direct
17 your attention to the second page, please.

18 This required you to file on December 13th with the Court
19 a brief or response addressing any and all steps that you've
20 taken to purge yourself of contempt. "Kline shall address how
21 and when he had satisfied each of the discovery obligations
22 set forth in paragraph 41." Do you see that?

23 A Yes.

24 Q Okay. And do you see the sentence directly below that,
25 "Kline shall also advise the Court as to the specific steps he

Kline - Examination by Ms. Phillips

1 has taken in his active efforts to secure counsel over the
2 past several weeks." Did you do that?

3 A No. All I had done was provided the -- my response to
4 the -- how and when the discovery obligations were met.

5 Q Well, let's go to tab -- go to tab 6, please. We'll look
6 at your response. Can you identify anywhere in this response
7 where you indicate when you satisfied any of the discovery
8 obligations from paragraph 41?

9 A No, but I believe it was done on December 6th, as we had
10 said previously, is when I had sent this in, or sent the first
11 set in. December 6th would be the date that I sent in the
12 information to complete my discovery.

13 Q I understand that. But this is a December 10th order
14 from Judge Moon asking to you provide him with information
15 regarding how and when. And my question to you is: You did
16 not provide him information with regard to when you came into
17 compliance with some of your discovery obligations, did you?

18 A No. Like I said, I thought that December 6th e-mail was
19 doing that.

20 Q Okay. And this -- at tab 6, this e-mail that you sent,
21 did you send it to Judge Moon?

22 A Now, this is -- no, it doesn't look like I did. But
23 right now I'm using -- I'm, like, trying to get this done. I
24 got my old phone back and I was trying to use -- I've been
25 trying to use that to complete the discovery and do the

Kline - Examination by Ms. Phillips

1 e-mails and things like that. But I still don't have my
2 other -- my other two phones that I had given you, so I've
3 been using that phone. And I meant to put that in there -- I
4 thought I had -- to send that to the Court. But I had sent it
5 to just one person; I meant to send it to both. It usually
6 auto fills when I do that, but it didn't auto fill. I thought
7 it did.

8 MS. PHILLIPS: Your Honor, I don't think I have
9 anything further.

10 THE COURT: Okay. Mr. Kline, in respect to the
11 plaintiffs' request for you to produce documents, you only
12 produced one document; is that correct?

13 THE WITNESS: Yes, Your Honor. It's the planning
14 document that we had used. That was the only document that I
15 created that we used for the event.

16 THE COURT: All right. Where did you look for
17 documents, e-mails, and texts?

18 THE WITNESS: So I went through the e-mail addresses
19 that I have access to, so the Deplorable Truth one, the Eli F.
20 Mosley one. I went to the Google drive on those accounts to
21 search for any documents that I had, and the only document
22 that I had was that one document that I had released. That
23 was the only thing.

24 THE COURT: With all the correspondence that went on
25 with this, you only have one document?

Kline - Examination by Ms. Phillips

1 THE WITNESS: I mean, we weren't, like, a
2 professional organization or anything like that, Your Honor,
3 and a lot of things were kind of decentralized, I would say.
4 So, essentially, I just provided the, like, barebones general
5 outline, and then each individual group, each individual
6 defendants' group did their own actual in-depth planning. So
7 they could possibly have their own planning documents. But
8 mine was kind of "Be here at this time" and kind of the
9 barebones of what was going on, not the intricate details.

10 THE COURT: You only have just one document?

11 THE WITNESS: Yes, Your Honor. Like I said, all we
12 did was make one document kind of explaining to people what to
13 do.

14 THE COURT: And there was no correspondence back and
15 forth?

16 THE WITNESS: When you say "correspondence," do you
17 just mean, like, e-mails and things like that? Because
18 everything was done -- all the communication was done through
19 Discord. So the only documentation that would be from the
20 Unite the Right rally would be in Discord -- from myself
21 anyway, would be in Discord, and then that document.

22 THE COURT: Okay. Anything else?

23 MS. PHILLIPS: No, Your Honor.

24 THE COURT: Step down.

25 Let's take a break for a few minutes. But does the

Kline - Examination by Ms. Phillips

1 plaintiff have any idea what they can get out of this witness,
2 party witness, and what he could, from jail, purge himself for
3 not supplying?

4 MS. PHILLIPS: I mean, our view is that he can revise
5 the answers to his first set of interrogatories that we've
6 just established are woefully deficient and not fulsome. He
7 can answer the second set of interrogatories, which he has not
8 done, and which we absolutely sent him, both over e-mail and
9 gave him hard copies in this courtroom. And that he can do
10 the declaration under oath with regard to his social media
11 credentials. Because to the extent that you have required him
12 to provide with specificity why he doesn't have those
13 credentials, we would like to have that under oath.

14 THE COURT: Okay. I'm going to take a short recess,
15 and if y'all would stay within a few minutes.

16 (Recess taken from 11:45 a.m. until 11:56 a.m.)

17 THE COURT: I've considered the arguments and
18 evidence presented today, as well as the parties' previous
19 submissions on the issue.

20 I do not find that Kline has met his burden of
21 showing that he has purged himself of contempt as of today's
22 date. I continue to find by clear and convincing evidence
23 that Kline remains in contempt of court.

24 Kline has not fulfilled all of the affirmative steps
25 this Court set forth in paragraph 41 of the civil contempt

Kline - Examination by Ms. Phillips

1 order. There this Court ruled that Kline must complete the
2 following steps in order to purge himself of contempt: First,
3 there is no dispute Kline did not send his discovery responses
4 to the Court when they were completed, as paragraph 41A
5 requires. That was simple and it was not done.

6 Second, Kline's answers to plaintiffs' discovery
7 requests were deficient as a matter of form and substance.
8 Kline was required to respond to the interrogatories under
9 oath. Paragraph 41A required Kline to fully and completely
10 respond to them. He did not respond under oath as required.

11 Third, plaintiffs have identified numerous respects
12 in which Kline's substantive responses were lacking. In
13 particular, this Court finds deficient his responses regarding
14 the means of communication regarding the events at issue. He
15 listed only discovery in Twitter, he did not include his
16 e-mail accounts, Facebook, Gab, or YouTube. These omissions
17 are significant in their own right, and they further show that
18 Kline did not take seriously his obligation to respond.

19 Fourth, paragraph 41b provided that for any accounts
20 where Kline confirms he no longer has access credentials, he
21 was to submit a declaration under oath and under penalty of
22 perjury to that effect, and which states with specificity the
23 reasons why such credentials are unavailable to Kline. He did
24 not do so.

25 There are other respects in which Kline did not

Kline - Examination by Ms. Phillips

1 complete his obligations this Court provided to purge himself
2 of contempt. Those will be set forth in a written order to
3 follow.

4 I'm also troubled by the amount of time Kline took to
5 begin the process of purging himself of contempt. It appears
6 that he waited nearly two weeks after the hearing, where he
7 was found in contempt until December 5, for him to give
8 plaintiffs those deficient discovery responses. That was ten
9 days after he was found in contempt and three days after the
10 beginning -- he began incurring \$200 per day fines.

11 I am also troubled by his failure to respond to
12 plaintiffs' set of discovery requests. Those don't form the
13 basis for a contempt, but they do show that he has not turned
14 things around and he has not had a change of heart.

15 A written order will issue, but Kline is still in
16 contempt of court.

17 I will order as a means to coerce Kline to complete
18 his discovery obligations that he pay plaintiffs -- pay \$600
19 to plaintiff, representing three days of his noncompliance
20 with this Court's order and failure to purge himself of
21 contempt.

22 Kline will pay that amount to plaintiffs and their
23 counsel, and will have a money order to that effect no later
24 than December 30, 2019.

25 This Court will suspend any further incurring of

Kline - Examination by Ms. Phillips

1 fines between today's date and the issuance of a further
2 written order.

3 And, Mr. Kline, what I'm going to order is that you
4 report to the office of the United States marshal here in this
5 courthouse on January -- Monday, January the 6th, at noon.
6 Have with you everything you need to comply with the Court's
7 previous orders.

8 DEFENDANT KLINE: I understand.

9 THE COURT: And that doesn't mean, you know, send a
10 lot of e-mails and come down here and say, "Well, I thought I
11 had done it."

12 You are to report to jail and start sending the
13 responses. And when the Court is satisfied that you have
14 purged yourself of contempt, you will be allowed to get out of
15 jail.

16 DEFENDANT KLINE: Okay, Your Honor.

17 THE COURT: And the order will -- an order setting
18 forth this will follow.

19 DEFENDANT KLINE: Okay. Your Honor. I have some
20 questions. Can I ask some questions?

21 THE COURT: Yes.

22 DEFENDANT KLINE: So that's this building here,
23 January 6th?

24 THE COURT: Yes.

25 DEFENDANT KLINE: At noon?

Kline - Examination by Ms. Phillips

1 THE COURT: At noon.

2 DEFENDANT KLINE: Okay. And then for the sworn
3 statements and under oath, things where -- the first set of
4 interrogatories, do I do that here? Or how exactly do I
5 comply with that order? I'm not sure I quite fully understand
6 what I need to do to make what I am putting in writing under
7 oath, if that makes sense.

8 THE COURT: Well, you can verify -- as I suggested,
9 you should have cooperated with your lawyers when you had
10 them. But you can -- once you have completed it, you can ask
11 to see, possibly, the marshal. The marshal can refer you to
12 the clerk or Judge Hoppe --

13 DEFENDANT KLINE: Okay. Thank you, Your Honor.

14 THE COURT: -- someone in Judge Hoppe's office to do
15 that.

16 DEFENDANT KLINE: Okay, Your Honor. And my other
17 question is, I would like to ask the plaintiffs what the
18 current status of my missing phones were.

19 THE COURT: I'm not -- I'm aware of the problem, but
20 I cannot bring you up-to-date on that.

21 DEFENDANT KLINE: Okay.

22 THE COURT: And if the plaintiff should notify the
23 Court earlier that you have done something to come into
24 compliance -- I'll ask them if they do find that he's in
25 compliance before the 6th, let me know.

Kline - Examination by Ms. Phillips

1 That does not -- you are to be here on the 6th, at
2 noon, at the marshal's office.

3 DEFENDANT KLINE: I understand.

4 THE COURT: And the only person who can tell you not
5 to come on that date is me. And it's no such thing as you
6 thought or something -- you thought something else changed
7 what you were supposed to do.

8 DEFENDANT KLINE: I understand.

9 THE COURT: Only a written order from this Court,
10 signed by me, will excuse you from being there.

11 DEFENDANT KLINE: Okay. I understand.

12 THE COURT: Okay. Anything else we can do today?

13 MS. PHILLIPS: No, Your Honor. Thank you.

14 THE COURT: Anything? Okay. Thank you all. Sorry
15 we held you up.

16 Recess.

17 Did you mean this binder to be an exhibit?

18 MS. PHILLIPS: No.

19 (Court recessed at 12:04 p.m.)
20
21
22
23
24
25

Kline - Examination by Ms. Phillips

CERTIFICATE

I, Judy K. Webb, certify that the foregoing is a
correct transcript from the record of proceedings in
the above-entitled matter.

/s/ Judy K. Webb

Date: 12/20/2019